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STATEMENT  
OF  
TIMOTHY J. LAFOND

ON BEHALF OF THE  
BATTERY COUNCIL INTERNATIONAL

BEFORE THE EPA STAKEHOLDERS MEETING ON  
THE SUPERFUND RECYCLING EQUITY ACT

JULY 17, 2000

Good day, my name is Tim Lafond. I am the Manager of Environmental Relations for Johnson Controls, Inc., a lead battery manufacturer headquartered in Milwaukee, Wisconsin, and Chairman of the Battery Council International (BCI) Environment Committee. I am pleased to appear today on behalf of BCI to express our views on the Superfund Recycling Equity Act (SREA), and in particular, whether or not EPA guidance on the "reasonable care" standard for prospective recycling transactions is warranted. Before I do so, however, please allow me to provide some background on BCI and its members.

**Background on BCI**

BCI is a not-for-profit trade association composed of commercial entities from around the world that are involved in the manufacture, supply, distribution and reclamation of lead batteries. BCI members include manufacturers and distributors of lead batteries, secondary smelters that reclaim lead batteries once they are spent, and suppliers to the lead battery industry. Domestically our membership accounts for

approximately 99 percent of the nation's lead battery manufacturing capacity, and over 85 percent of its battery recycling capacity.

The lead batteries we manufacture and recycle are used for starting, lighting and ignition systems in all types of vehicles, marine systems, and lawn and garden equipment; to power portable electronic devices such as computers and household tools; and in a variety of motive power and industrial applications such as forklifts, airport service vehicles, emergency lighting and telecommunication backup systems.

Lead batteries have been collected and recycled for almost a century. BCI's members are actively engaged in this activity. Today, over 90 percent of the lead used in batteries is recycled annually.

This extraordinary performance reflects the success of BCI and its members in working cooperatively with federal, state and local governments and authorities. For example, over a decade ago BCI developed model recycling legislation, patterned after the collection and recycling infrastructure developed over the prior decades. It prohibits the disposal or incineration of lead batteries and requires their collection through reverse distribution (mandatory take-back) programs. Forty-two states have adopted this legislation in whole or in part.

#### **Need for Bright Line Guidance**

As I think you will agree, BCI's members bring considerable experience to the table on the issue of lead battery recycling. And, like other interests appearing here today, our members, have, in the past, been subject to Superfund liability because they collected lead batteries and other lead-bearing materials and sent them to recycling facilities.

Indeed, it is our experience with Superfund liability that leads us to the conclusion that any guidance put forward by EPA should establish a bright line standard on the type of practices necessary to meet the “reasonable care” standard of Sections 127(c)(5) and (6). Such guidance will assist generators in complying with the terms of the Section 127, and in avoiding costly future disputes over whether the requirements of the exemption were met in order to entitle a party to liability relief.

We also believe it would be appropriate for EPA’s guidance to take the form of a regulation promulgated pursuant to the Administrative Procedure Act. The promulgation of a regulation will both provide a full and fair opportunity for public comment and avoid any future disputes over whether the requirements of the exemption have been met in particular circumstances. Furthermore, we believe Congress intended that EPA embody its views in regulations when it included in the statute section 127(h), which authorizes EPA to “promulgate additional regulations concerning [section 127].” This would include regulations interpreting the “reasonable care” standard.

Whatever form EPA’s guidance takes, it must be straightforward, easy to understand and written to accommodate all of the types of recycling transactions that are subject to the provisions of Section 127. It also must cover all the differing types of recycling facilities to which recyclable materials will be sent.

### **Reasonable Care Principles**

Let me now turn to the issue at hand: what BCI believes is necessary to meet the “reasonable care” standard under Section 127. BCI does not believe that the drafters of Section 127 intended that a generator must undertake an exhaustive review and examination of the recycling facility’s past and present compliance with all

environmental laws and regulations in order to qualify for the exemption. To the contrary, as Senator Lott stated during consideration of the SREA:

127(c)(6)(c) requires a responsible person who arranges for the recycling of a recyclable material to inquire of the appropriate environmental agencies as to the compliance status of the consuming facility. . . Section 127(c)(5) only requires a person to make reasonable inquiries; inquiries need not be made before every transaction. Inquiries need only be made to those agencies having primary responsibilities over environmental matters related to the handling, processing, etc. of the secondary materials involved in the recycling transaction. (145 Cong. Rec. at S.15049 (daily ed. Nov. 19, 1999) (Statement of Sen. Lott)).

With this in mind, BCI believes EPA's guidance on the reasonable care standard should reflect the following principles:

- The reasonable care standard should be the same for all generators. There should not be differing standards for generators on the basis of resources or size.
- In order to meet the reasonable care standard, and thus to qualify for the recycling exemption, generators should be required to undertake review or inquiry of the recycling facility that includes the following:

1. Receipt annually of a self-certification from the recycling facility that it is in material, current compliance with environmental laws, regulations and compliance orders or decrees relating to the handling, processing, and reclamation of the recyclable material. EPA should specify the appropriate wording of the certification; for example, it would be wholly adequate for the document to state that “our recycling facility is in material compliance with the substantive (as that term is defined in the Superfund Recycling Equity Act, Pub. L. No. 106-113, Stat. 1501) provisions of any federal, state or local environmental law or regulation or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation or other management activities of our facility.” By “material,” we mean compliance with all significant operational requirements. We do not believe a facility should be precluded from providing an adequate certification if, for example, it has failed to meet some minor recordkeeping or similar requirement.
2. In addition to obtaining the foregoing self-certification requirement, generators would need to do one of the following:
  - a. Annually undertake and document a visit to the recycling facility to visually inspect the operations and processes. Such a visit need not be as extensive as a Phase I environmental audit, but should allow generators to visually determine whether the facility is operating in an environmentally sound manner and in accordance with normal industry practices. As part of the visit, generators also

should review facility permits (if any) and enforcement records to determine that the facility is in substantive compliance with material environmental requirements; or

b. Annually inquire of regulators about the recycling facility's compliance with federal, state and local environmental laws and regulations, compliance orders and decrees, in one of the following ways:

- The generator could make inquiries to the appropriate federal, state and local authorities to determine whether there are any material compliance issues relating to the recycling facility. This would involve phone calls or letters to the appropriate federal, state or local authorities with oversight responsibility for the recycling facility. Generators would be required to document their inquiries to show compliance with this requirement; or
- The generator could undertake a search through a reasonably comprehensive commercial database that can be expected to reveal evidence of environmental compliance or the lack thereof (enforcement actions, etc.). Again, the generator would be required to document the databases searched and the results obtained from that review.

## **Conclusion**

In conclusion, we believe that the principles discussed above will best effectuate compliance with the terms of the SREA and the intent of Congress, while at the same time ensuring protection of human health and the environment. I would be pleased to answer any questions you may have.